UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of:	)	
	)	
Thomas Michael Fisher,	)	
	)	**Proceeding No. D09-01**
Respondent	)	
	)	
	)	

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(d), the Director of the United States Patent and Trademark Office (USPTO or Office) hereby orders the suspension of Thomas Michael Fisher (Respondent) for a period of six months from the practice of patent, trademark, and other non-patent law before the USPTO for violation of the ethical standards set out in 37 C.F.R. §§ 10.23(a) and (b), via 37 C.F.R. § 10.23(c)(5).

I. BACKGROUND AND PROCEDURAL HISTORY

In or around December 1979, in the State of Nevada, Respondent broke into a stranger's home, held a woman at gunpoint, and stole property including her keys. Respondent returned the next day and stole the victim's car.

On or about January 12, 1980, Respondent was arrested in California and extradited to Nevada, where he was charged with Grand Larceny-Auto, Use of a Deadly Weapon, Robbery and Burglary. He was later released on bond.

Respondent returned to California while out on bond.

In or around June 1980, while in California, Respondent burglarized two cars and three motor homes; damaged some tools and supplies belonging to a construction company; and stole food from his employer.

On or around June 15, 1980, Respondent was arrested and charged in California with Burglary of a Residence and Receiving Stolen Property.

On or about August 26, 1980, Respondent was arrested in California and charged with embezzlement.

On September 3, 1980, pursuant to a plea agreement, Respondent pled guilty to and was convicted of Robbery and Burglary in Nevada. The Grand Larceny-Auto and Use of Deadly Weapon charges were dismissed as part of the plea agreement.

Respondent was sentenced to ten years in the state penitentiary for Robbery and a concurrent five years for Burglary. Respondent served three years and three months in a Nevada state penitentiary on the Robbery and Burglary charges and was released from prison on or around December 14, 1983.

Respondent was extradited from Nevada for the Burglary and Embezzlement charges in California in 1981, at which point the California charges were changed to five counts of violations of Section 459 and one count of violating Section 594 of the California penal code. The California charges were later dismissed for lack of a speedy trial.

In 1996, Respondent received a pardon from the State of Nevada for the Burglary and Robbery convictions.

Respondent contends that, while seeking his Nevada pardon, he was told that the record of his convictions would be sealed if he received a pardon.

In January or February 1997, Respondent obtained a copy of his FBI report and testified that it came back "clean."

In 2000, Respondent graduated from the Washington University School of Law.

On or about March 16, 2000, Respondent submitted an Application for Character and

Fitness to the Missouri Board of Law Examiners (Missouri Bar Application).

Question 17 of the Missouri Bar Application states:

> Have you ever, either as an adult or a juvenile, been cited, arrested, charged or convicted for any violation of any law?

Respondent answered "NO" to question 17 of the Missouri Bar Application.

In response to question 18 of the Missouri Bar Application, concerning traffic violations, Respondent responded "YES" and described two traffic incidents, one in 1998, and one sometime between 1994 and 1997.

An independent investigation by the Missouri Board of Law Examiners (Missouri Board) did not uncover Respondent's 1980 arrests, charges, or convictions.

On or about June 19, 2000, the Missouri Board informed Respondent that his character and fitness investigation had been completed and his application to take the bar examination was approved.

On or about September 2000, Respondent became licensed to practice law in Missouri after passing the Missouri Bar examination.

On March 19, 2001, Respondent became registered to practice before the USPTO as a patent attorney.

In or about July 2005, Respondent applied for a license to practice law in North Carolina by comity.

The North Carolina Board of Law Examiners (North Carolina Board) learned of Respondent's 1980 arrests, charges, and conviction during its character and fitness investigations because (apparently due to a change in Nevada's handling of Pardons) the information now appears on Respondent's FBI criminal history report.

On December 21, 2005, the North Carolina Board notified Missouri of Respondent's

criminal history report.

In his Verified Memorandum of Respondent dated September 14, 2007, submitted in a proceeding before the Missouri Supreme Court, Respondent admits that he should have disclosed the California criminal charges on the Missouri Bar Application.

In a transcript dated November 15, 2007 (Transcript) submitted in the proceeding before the Missouri Supreme Court, Respondent indicates that he considered responding "YES" to question 17 of the Missouri Bar Application, but ultimately decided to answer "NO". Transcript at 53.

Respondent did not research Missouri law or check with the Missouri Board to determine if he could permissibly answer "NO" to question 17 of the Missouri Bar Application. Transcript at 56.

Respondent admits that he should have reported the Nevada charges for which he was not pardoned, Grand Larceny-Auto and Use of a Deadly Weapon, to the Missouri Board. Transcript at 62.

Respondent admits that he should have reported the Nevada charges for which he was pardoned to the Missouri Board. Transcript at 66.

Respondent admits that he lied on his Missouri Bar Application. Transcript at 70.

In December 2007, a Missouri Disciplinary Hearing Panel issued a recommendation that Respondent's Missouri law license be suspended for six months.

On September 30, 2008, the Missouri Supreme Court issued an *en banc* order (Missouri Supreme Court Order) suspending Respondent from the practice of law in Missouri.

On November 25, 2008, Respondent's registration status before the Office was changed from patent attorney to patent agent.

A "Notice and Order Under 37 C.F.R. § 11.24" mailed January 21, 2009, (Notice and Order) informed Respondent that the Director of the Office of Enrollment and Discipline (OED Director) had filed a "Complaint for Reciprocal Discipline Under 37 C.F.R. § 11.24" (Complaint) requesting that the USPTO Director suspend Respondent from practice before the USPTO. The request for suspension of the Respondent in the Complaint was based upon the Missouri Supreme Court Order finding Respondent guilty of professional misconduct and suspending Respondent from the practice of law in Missouri. The Notice and Order directed Respondent to file, within 40 days, a response containing all information Respondent believes is sufficient to establish a genuine issue of material fact that the imposition of discipline identical to that imposed by the Missouri Supreme Court would be unwarranted based upon any of the grounds permissible under 37 C.F.R. § 11.24(d)(1).

On or about February 24, 2009, the Office of General Counsel received a "Notice that there are Genuine Issues of Material Fact that the Imposition of Discipline Identical to that Imposed by the Supreme Court of Missouri would be Unwarranted" (Response) in which Respondent asserts that reciprocal discipline should not be applied.

II. LEGAL STANDARD

Under 37 C.F.R. § 11.24(e), the USPTO has codified standards for imposing reciprocal discipline, based on a state's disciplinary adjudication, that were set forth early in the last century in *Selling v. Radford*, 243 U.S. 46 (1917). Under *Selling*, state disbarment creates a federal level presumption that imposition of reciprocal discipline is proper unless an independent review of the record reveals 1) a want of due process, 2) an infirmity of proof of the misconduct, or 3) that grave injustice would result from the imposition of reciprocal

discipline. Federal courts have generally "concluded that in reciprocal discipline cases, it is the respondent attorney's burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline." *In re Kramer,* 282 F.3d 721 (9th Cir. Cal. 2002). This usually presents an uphill climb for the respondent attorney as the norm is to impose discipline that is substantially similar to that imposed by the state court. *In re Barach*, 540 F.3d 82 (1st Cir. 2008).

Specifically, 37 C.F.R. § 11.24(e) states, in part:

> . . . a final adjudication in another jurisdiction . . . or program that a practitioner . . . has been guilty of misconduct shall establish a prima facie case by clear and convincing evidence that the practitioner violated 37 C.F.R. 10.23, as further identified under 37 CFR 10.23(c)(5) . . .

Further, 37 C.F.R. § 11.24(d) states, in part:

> . . . the USPTO Director shall consider any timely filed response and shall impose the identical . . . suspension . . . unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:
>
> (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
>
> (ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;
>
> (iii) The imposition of the same public . . . suspension . . . by the Office would result in grave injustice; or
>
> (iv) Any argument that the practitioner was not . . . suspended . . .

III. ANALYSIS

A. Effect of Pardon

Due Process

Respondent asserts that he was deprived of due process with regard to his argument that Missouri should not have made public documents discussing events related to convictions for which he was pardoned by the state of Nevada. Specifically, Respondent takes exception with the fact that Missouri considered, and made public, documents related to the Robbery and Burglary convictions for which he was pardoned in Nevada. Respondent alleges that "a judge in Nevada had deemed certain events never to had happened" and that Missouri failed to give full faith and credit "to that order". Response at 3.

37 C.F.R. § 11.24(d) states, in part:

> . . . the USPTO Director shall consider any timely filed response and shall impose the identical . . . suspension . . . unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:
>
> (i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process . . .

Respondent was provided with both notice and opportunity to be heard with regard to the issue of whether Missouri should have made public documents related to the Nevada convictions for which he was pardoned. This is evidenced by the facts.

On or about September 14, 2007, during the course of the Missouri proceeding, Respondent filed a Verified Memorandum of Respondent (Verified Memorandum) with the Missouri Office of the Chief Disciplinary Counsel. In his Verified Memorandum, Respondent asserts, inter alia, that 1) when he attempted to confirm that he need not reveal the convictions for which he was pardoned to any person, the Executive Secretary of the Nevada Pardons Board told him "It's as if it never happened"; 2) he "was told that the pardon would result in his criminal records being completely sealed"; and 3) as of early 1997, his FBI record showed no criminal record. Verified Memorandum at 5. In addition,

the Informant's Memorandum of Law (Informant's Memorandum), mailed to Respondent's counsel on September 14, 2007, addresses at length Respondent's argument that the Nevada pardon obviated his responsibility to report information relating to the crimes for which he was pardoned. Informant's Memorandum at 8.

The Missouri Disciplinary Hearing Panel (DHP) indicates, in its DHP Decision that, inter alia, Respondent's Verified Memorandum as well as a Respondent's Response to Informant's Memorandum of Law were received and made a part of the hearing record. DHP Decision at 2. Further, the Missouri Supreme Court Order indicates that in the proceeding before the Missouri Supreme Court, the DHP "filed the complete record and the parties fully briefed and argued said cause". Accordingly, during the Missouri proceeding, Respondent was provided with opportunity to, and did in fact, present his case with regard to the issue of whether the events related to the convictions for which Respondent was pardoned were properly discussed and considered therein. Thus, Respondent has not demonstrated by clear and convincing evidence that the Missouri proceeding was so lacking in notice or opportunity to be heard, in relation to the issue of whether these events were properly discussed and considered therein, as to constitute a deprivation of due process.

Infirmity of Proof

Respondent contends that the Missouri Supreme Court failed to fully appreciate and consider the legal effect of the pardon Respondent received with regard to his Robbery and Burglary convictions in Nevada. Specifically, Respondent asserts that, in determining that he violated ethics rules, Missouri improperly considered Nevada events, related to the pardoned Nevada convictions, which Respondent contends were deemed by a Nevada judge never to have occurred as a result of the pardon. Response at 4.

In a letter dated November 18, 2003, the Nevada Attorney General issued an informal opinion on the effect of a pardon in the state of Nevada (Opinion of Nevada Attorney General).[1] The Opinion of the Nevada Attorney General states, in part:

> . . . a pardon "does not obliterate the conviction or restore a person's good character." Op. Nev. Att'y Gen. No. 83-13 (September 14, 1983) at 52. The "effect of a pardon is to forgive and not to forget." *Id.* A full, free, and unconditional pardon . . . "cannot erase the basic fact of a conviction, nor can it wipe away the social stigma that a conviction inflicts." *Bjerkan v. United States*, 529 F.2d 125, 126 (7th Cir. 1975). . .

Opinion of Nevada Attorney General at 8. The Opinion of the Nevada Attorney General also states, in part:

> . . . applicant for . . . professional license could be denied a license . . . based on the underlying conduct regardless of whether he was ever convicted or, if convicted, pardoned. *Carlesi v. People of New York*, 233 U.S. at 57.

Opinion of Nevada Attorney General at 13; *Carlesi v. People of New York*, 233 U.S. 51 (1914).

In addition, the web site of the Nevada Board of Pardons Commissioners includes a web page outlining the effect of a pardon in Nevada.[2] The web page states, in part:

What a Pardon does:

- An unconditional pardon removes all disabilities resulting from conviction thereof.
- A Pardon forgives but does not forget.

* * * * * * *

A Pardon does <u>NOT</u>:

[1] The Opinion of the Nevada Attorney General may be accessed at the following web address: http://www.pardons.nv.gov/PardonInformalOpinion.pdf

[2] The web page of the Nevada Board of Pardon Commissioners outlining the effect of a pardon in Nevada may be accessed at the following web address: http://www.pardons.nv.gov/effect.htm

- A Pardon does not overturn a judgment of conviction.
- A Pardon does not erase or obliterate the fact that one was once convicted of a crime.
- A Pardon does not substitute a good reputation for one that is bad.

* * * * * * *

- A Pardon does not attest to rehabilitation of a person.
- With regard to occupational licensing, where a statute limits rights based on the underlying conduct and not the pardoned offense itself, a pardon would not remove or erase the disability of past conduct. If there is a requirement that the license applicant has not been convicted of a felony, the pardon would permit licensing. However, if the licensing standard is good moral character, the pardon does not erase the moral guilt associated with the commission of a criminal offense and the fact giving rise to that conviction may be considered in determining whether that person is of "good moral character."

* * * * * * *

Further, the Supreme Court of Missouri has set forth its view on the effect of a pardon, stating:

> . . . the fact of conviction is obliterated but the guilt remains. . . Under this view, if disqualification is based solely on the fact of conviction the eligibility of the offender is restored. On the other hand, if good character (requiring an absence of guilt) is a necessary qualification, the offender is not automatically once again qualified merely as a result of the pardon.

Guastello v. Department of Liquor Control, 536 S.W.2d 21, 23-24 ((Mo. Banc 1976).

Accordingly, Respondent's assertion that a Nevada pardon of a conviction deems the events associated with the conviction never to have occurred is inconsistent with both

Nevada policy as interpreted by the Nevada Attorney General and the Nevada Board of Pardons Commissioners as well as Missouri policy as expressed by the Missouri Supreme Court. Accordingly, Respondent has not demonstrated by clear and convincing evidence that his Nevada pardon for the Robbery and Burglary convictions deemed the events leading up to those conviction never to have occurred. Respondent's assertion that Missouri should not have considered or made public information regarding events related to his Nevada Robbery and Burglary convictions is based on his faulty interpretation of the effect of a pardon which is inconsistent with both Missouri policy as well as the Nevada policy upon which he seems to base his interpretation. Thus, Respondent has not demonstrated by clear and convincing evidence that there was such an infirmity of proof leading to the Missouri Supreme Court decision to consider events related to the Nevada convictions for which Respondent was pardoned as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final its conclusion that Respondent violated Missouri ethics rules.

Grave Injustice

Respondent asserts that it would amount to a grave injustice to suspend him from practice before the USPTO. He alleges that a Nevada official (the Executive Secretary of the Nevada Pardons Board) told him that upon receiving a pardon "It's as if it never happened." Respondent also points out that the FBI initially erased his record after receiving news of his pardon. Respondent argues that he appropriately relied on the advice of the Nevada official as well as the FBI's erasure of his record, in deciding to answer "NO" with regard to his criminal history on his Missouri Bar Application (as well as his USPTO bar application). Respondent asserts that accordingly, he did not have the mens rea to be

guilty of any ethical violations.

As explained above, it is the position of the Nevada Attorney General and the Nevada Board of Pardons Commissioners that a pardon does not erase the fact that one was once convicted of a crime nor does it substitute a good reputation for one that is bad. Further, as explained above, it is Missouri policy that if good character is a necessary qualification, an offender is not automatically once again qualified as a result of a pardon. *Guastello*, 536 S.W.2d at 23-24. As a member of the legal profession, Respondent should have researched the effect of a pardon before presuming that it would erase any or all records related to the convictions for which he received the pardon. As to the Nevada process, even if a pardon made a conviction "as if it never happened", question 17 asked for more than convictions and the Nevada pardon did not address the Nevada arrests and charges that would have been responsive to the question. Further, a Nevada pardon could not render the California arrests and charges as facts that Respondent need not disclose with respect to question 17. Respondent should have disclosed all of the required facts related to his prior criminal history and allowed the Missouri Board to make a fully informed decision about whether or not to admit him to the Missouri Bar.

The fact that Respondent chose to withhold the truth about his prior criminal history on his bar application raises doubts about his character and propensity for truthfulness. Further, the statutory responsibility of the USPTO to assure that those who represent parties before the USPTO be of sound moral character and reputation would not be well served if the Office allowed continued practice by those found to have committed ethical violations (such as lying on their bar application) that warrant suspension by a state bar. A lack of candor such as is exemplified by Respondent's, at best, self-interested construction of

question 17 is all the more critical to the moral character required for practice before the Office because most Office proceedings are ex parte and thus depend upon those authorized to practice to assure full and candid disclosure of material facts to the Office. Accordingly, Respondent has not demonstrated by clear and convincing evidence that it would amount to a grave injustice for the USPTO to impose reciprocal discipline based upon the Missouri Supreme Court Order suspending him from the practice of law.

B. Time of Ethical Violations

Respondent points out that the underlying actions for which he was disciplined in Missouri occurred prior to when he became registered to practice before the Office. On March 16, 2000, he submitted his Missouri Bar Application in which he answered "NO" regarding his criminal history. Respondent did not become a member of the patent bar until March 19, 2001. He argues that there is an important difference between committing an ethical violation while practicing versus committing an ethical violation prior to admittance to the patent bar. Respondent asserts that 37 C.F.R. § 10.23(c)(5) contemplates suspension on ethical grounds based upon ethical violations that occurred while practicing not actions predating registration.

As an initial matter, it is noted that not all of Respondent's Missouri ethical violations occurred prior to the time he became registered to practice before the patent bar. The Missouri Rules of Professional Conduct (RPC) Rule 4-8.1 states, in part:

> An applicant for admission to the bar or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not:
>
> * * * * * * * *
>
> (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter . . .

Accordingly, Respondent had an ongoing duty to disclose the fact that he hid the truth when answering "NO" on his Missouri Bar Application. As such, Respondent continually violated RPC 4-8.1 even after he became registered to practice before the Office on March 19, 2001.

In any event, as recently explained by the United States Court of Appeals for the Federal Circuit:

> 35 U.S.C. § 32 provides that the USPTO has statutory authority to exclude "from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) of this title." 35 U.S.C. § 2(b)(2)(D) delegates to the USPTO the authority to establish regulations that "govern the . . . conduct of . . . attorneys" practicing before the Office.
>
> Pursuant to this statutory authority, the USPTO has enacted disciplinary rules. As stated in 37 C.F.R. § 10.20, "Disciplinary Rules are set out in §§ 10.22-10.24 . . . Disciplinary Rules are mandatory in character and state the minimum level of conduct below which no practitioner can fall without being subjected to disciplinary action." 37 C.F.R. § 10.20(b). One such disciplinary rule is 37 C.F.R. § 10.23.

Sheinbein v. Dudas, 465 F.3d 493, 495 (Fed. Cir. 2006).

37 C.F.R. § 10.23 states, in part:

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

* * * * * *

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes,

but is not limited:

* * * * * *

(5) Suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State . . .

* * * * * *

The court in *Sheinbein* goes on to state:

> Based on the plain language of 37 C.F.R. § 10.23(c)(5), we agree that a practitioner may be found unfit to practice based solely on his disbarment in another jurisdiction. In such cases, the exclusion is based on the finding of the other jurisdiction regarding the practitioner's conduct, not based on the conduct that resulted in the disbarment.

Id. at 496.

Respondent was disbarred in the State of Missouri on ethical grounds. This disbarment falls within the strictures of § 10.23(a) and (b), and expressly § 10.23(c)(5). Since Respondent's prior disbarment violates § 10.23, the USPTO may properly exclude him from practice. *Id.* at 496. The fact that Respondent's ethical violation of lying on his Missouri State bar application occurred prior to his registration before the USPTO, is not dispositive of the question of whether he may be properly excluded from practice before the USPTO under § 10.23.

If the USPTO were to decline to apply reciprocal discipline under these circumstances, it would reward a practitioner who successfully conceals a prior ethical violation upon application and entry to a bar. Such a result would not be in keeping with USPTO's statutory responsibility to assure that those who represent parties before the Office be of sound moral character and reputation. Respondent has not demonstrated by clear and convincing evidence that it would amount to a grave injustice for the USPTO to impose

reciprocal discipline based upon the Missouri Supreme Court Order suspending him from the practice of law.

C. Propriety of Suspension by USPTO

Respondent asserts that the USPTO should preferably take no action against him or alternatively should, at most, reciprocally discipline him by downgrading his status before the USPTO from attorney to agent. Respondent argues that the imposition of any further discipline by the USPTO is unwarranted and would amount to a grave injustice. As explained in part **A** above, Respondent asserts that, during the course of the Missouri proceedings, allegedly private documents (related to Nevada convictions for which he was pardoned) were improperly considered and made public.

As explained in part **A** above, Respondent had the opportunity to and did in fact put forth, during the Missouri proceedings, his arguments with regard to the issue of whether it was appropriate to discuss and consider, on the record, events related to the convictions for which Respondent was pardoned in Nevada. Further, as explained above, it is the position of the Nevada Board of Pardons Commissioners that a pardon does not 1) erase the fact that one was once convicted of a crime, 2) substitute a good reputation for one that is bad, or 3) with regard to occupational licensing, erase the moral guilt associated with the commission of a criminal offense that may be considered in determining whether a person is of good moral character. In addition, the Supreme Court of Missouri has held that a pardon obliterates the fact of conviction, but the convicted person's guilt remains such that if good character is a necessary qualification, the offender is not automatically once again qualified merely as a result of a pardon. *Guastello*, 536 S.W.2d at 23-24. Accordingly, Respondent's assertion, that during the Missouri proceedings private documents were improperly made public, is not consistent with either Nevada or Missouri

policy on pardons. A pardon does not generally make private documents regarding events related to a pardoned conviction.

Respondent also asserts that the imposition of reciprocal discipline would amount to a grave injustice in this instance because it is not possible for the USPTO to establish an appropriate suspension period. Specifically, Respondent points out that the suspension imposed by the Supreme Court of Missouri is for an undetermined amount of time. Further, RPC Rule 5.28(e) states, in part:

> Except for good cause shown, no application for reinstatement for a person who is:
>
> (1) Suspended . . . shall be considered until after six months of the date discipline is imposed . . .

Respondent asserts that there is no case law defining "good cause" under RPC Rule 5.28(e). He further asserts that he intends to petition for reinstatement by making a showing of "good cause" under RPC Rule 5.28(e). Accordingly, Respondent urges that the USPTO should not impose reciprocal discipline upon him.

In the event a Missouri attorney is suspended for an undetermined amount of time, RPC Rule 5.28(e) sets a default minimum suspension period of six months from the date discipline is imposed. The fact that Respondent may, at some point in the future, petition for reinstatement based on a proposed showing of good cause under the exception clause of RPC Rule 5.28(e) does not undermine the fact that, in accordance with the Missouri Supreme Court Order and RPC Rule 5.28(e), Respondent's Missouri State law license has, in effect, been suspended for the minimum default period of six months. Furthermore, this six-month default suspension period imposed under the Missouri ethics rules seems more than equitable considering the facts of this case. If Respondent had properly disclosed his criminal history on his Missouri Bar Application, he could have legitimately been denied entry into the Missouri Bar altogether. Thus, the six-month

suspension period imposed by the Missouri Bar is not only clearly defined but is also fair.

For all of these reasons, Respondent has failed to demonstrate by clear and convincing evidence that it would amount to a grave injustice for the USPTO impose by reciprocal discipline the same six-month suspension imposed by the Supreme Court of Missouri.

IV. CONCLUSION

The USPTO Director hereby determines that: 1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and 2) suspension of Respondent from practice before the USPTO for a period of six months is appropriate.

ORDER

ACCORDINGLY, it is:

ORDERED that Respondent is hereby suspended from the practice of patent, trademark, and other non-patent law before the USPTO for a period of six months from the date of this Order;

ORDERED that the OED Director publish the following notice in the Official Gazette:

NOTICE OF SUSPENSION

Thomas Michael Fisher of Hickory, North Carolina, was formerly a registered patent attorney and is now a registered patent agent whose registration number is 47,564. The Director of the United States Patent and Trademark Office has ordered the suspension of Mr. Fisher from the practice of patent, trademark, and non-patent law before the United States Patent and Trademark Office for a period of six months for violating 37 C.F.R. §§ 10.23(a) and (b) via 37 C.F.R. § 10.23(c)(5) by being suspended from the practice of law in the State of Missouri for having lied on his bar application. The suspension imposed by the Director begins on April 23, 2009. This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24.

ORDERED that the OED Director shall give notice of this Final Order to the public including 1) appropriate employees of the USPTO, 2) any interested departments, agencies, and courts of the United States, and 3) appropriate authorities of any State in which Respondent is known to be a member of the bar;

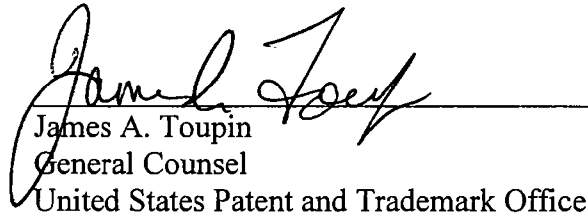
ORDERED that Respondent shall comply with his duties under 37 C.F.R. § 11.58 as a

suspended practitioner except that Respondent shall be eligible to apply for reinstatement under 37 CFR 11.60 six months from the effective date of the suspension;

ORDERED that Respondent comply with 37 C.F.R. § 11.60 should Respondent seek reinstatement except that Respondent shall be eligible to apply for reinstatement six months from the effective date of the suspension.

APR 23 2009

Date



James A. Toupin
General Counsel
United States Patent and Trademark Office

on behalf of

John Doll
Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office

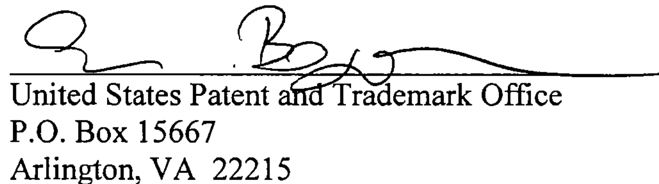
CERTIFICATE OF SERVICE

I certify that the foregoing Final Order Under 37 C.F.R. § 11.24 was mailed first class certified mail, return receipt requested, this day to the Respondent at the following address provided to OED pursuant to 37 C.F.R. § 11.11:

Thomas Michael Fisher
700 6th St. N.W.
Hickory, NC 28601

APR 23 2009

Date



United States Patent and Trademark Office
P.O. Box 15667
Arlington, VA 22215

Errata for

Final Order Under 37 C.F.R. § 11.24 of

The Acting Director of the United States Patent and Trademark Office

The following are corrections to the Final Order Under 37 C.F.R. § 11.24 dated April 23, 2009, in the matter of Thomas Michael Fisher, Proceeding No. D09-01:

Page 15, line 12:

Change "disbarred" to "suspended".

Change "disbarment" to "suspension".

Page 15, line 14:

Change "disbarment" to "suspension".